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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

CRAIG GORDON, Plaintiff and Appellant, v. HENRY K. KAWAMOTO et al., Defendants and Respondents.	B211948 (Los Angeles County Super. Ct. No. SC093483)

APPEAL from a judgment of the Superior Court of Los Angeles County. John L. Segal, Judge. Affirmed.

Glickman & Glickman and Steven C. Glickman for Plaintiff and Appellant.

Garrard & Davis, Steven D. Davis, Diane M. Daly; Greines, Martin, Stein & Richland, Martin Stein and Carolyn Oill for Defendant and Respondent Regents of the University of California.

Taylor Blessey and Barbara M. Reardon for Defendant and Respondent Adel Tawfilis.

Plaintiff/Appellant Craig Gordon appeals the trial court's entry of judgments of dismissal in favor of the Regents of the University of California ("Regents") and Adel Tawfilis, D.D.S. ("Tawfilis") (collectively "Respondents"), following the court's sustaining of Respondents' demurrers.[1] Appellant contends that the trial court abused its discretion in denying his motion for reconsideration and his request for leave to file a Third Amended Complaint. We will affirm.

BACKGROUND

Appellant was severely injured in a dune buggy accident on October 11, 2003, and was unconscious until he awoke from facial surgery on November 5, 2003. When he awoke from the surgery, he suffered from double vision. The surgery was performed at the University of California San Diego Medical Center ("UCSD"), where Appellant was hospitalized from October 12, 2003, until his discharge on December 3, 2003.

In April 2007, Appellant filed a medical malpractice complaint against Dr. Henry Kawamoto and 50 Doe defendants. Appellant asserted only generally that he suffered injuries to his "body, nervous system and person," with no specific allegations about his injuries. Appellant asserted that he discovered Kawamoto's negligence after he had a CT scan in January 2006, but he did not make any allegation as to how Kawamoto was negligent.

Appellant filed a First Amended Complaint ("FAC") against Kawamoto and 50 Doe defendants in May 2007. Appellant asserted that Kawamoto performed surgery on him on July 16, 2004, and May 12, 2005. Appellant alleged that he complained of pain to Kawamoto on December 20, 2005, and that he discovered Kawamoto's alleged negligence after the January 2006 CT scan. As in his initial complaint, Appellant did not specify the nature of his alleged injuries, alleging only that he "suffered injuries to [his] body, nervous system and person and was caused to suffer general damages and will

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[1] Defendant Henry Kawamoto, M.D., was no longer a party as of an August 2008 hearing, and he is not a party to this appeal.

continue to suffer general damages in the future." Nor did Appellant make any allegations regarding the nature of Kawamoto's negligence or what the CT scan revealed.

In July 2007, Appellant identified Regents as Doe 36, UCSD as Doe 37, and Tawfilis as Doe 1. Regents filed a motion for summary judgment, arguing that the complaint was barred by the statute of limitations. Regents pointed out that Appellant's dune buggy accident occurred on October 11, 2003; that he underwent numerous medical surgical procedures while he was hospitalized at UCSD from October 12, 2003 to December 3, 2003; and that he did not file his complaint until April 2007, more than three years after he was discharged from UCSD. Regents further contended that Regents was not a proper Doe defendant because Appellant was aware of Regents' identity at the time he filed his complaint.

Tawfilis also filed a motion for summary judgment. Similar to Regents, Tawfilis argued that Appellant's complaint was untimely and that, even if not untimely, Tawfilis was not a proper Doe defendant.

Both Respondents attached exhibits indicating that Appellant was aware of his alleged injuries and of Respondents' connections with those injuries during his hospitalization in 2003. For example, Regents included Appellant's responses to interrogatories, in which Appellant stated that, while he was hospitalized at UCSD, he "was constantly telling them to stop with all the unnecessary drugs," which contributed to his harm; that he feared for his life in the hospital because of the errors made by the hospital staff; and that UCSD staff repeatedly ignored his requests to see an ophthalmologist. Regents attached Appellant's December 2, 2003 discharge report, and Tawfilis attached an operative report from UCSD dated November 5, 2003, indicating that Tawfilis was the surgeon. Respondents also attached excerpts of Appellant's deposition, in which Appellant stated that he became aware of his double vision problems when he first awoke from surgery in 2003, before he was discharged from UCSD.

In April 2008, Appellant moved for leave to file a Second Amended Complaint ("SAC"). Appellant contended that he had discovered evidence that Respondents

intentionally concealed the nature of his injuries, thus tolling the statute of limitations. According to Appellant, when he complained about double vision after his November 2003 surgery, Respondents told him that this was a result of his accident, but Respondents actually knew that it was caused by the surgery and intentionally concealed this information from him. To support his allegation, Appellant relied on the declaration of an expert who reviewed the results of forced duction tests performed on Appellant's eye before, during, and after surgery.

On May 14, 2008, the court ruled that Respondents' summary judgment motions were to be treated as motions for judgment on the pleadings. The court granted the motions, but gave Appellant 10 days leave to amend. The court stated, first, that the statute of limitations barred all of Appellant's claims against all the defendants. Nonetheless, the court decided to allow Appellant the opportunity to amend his complaint to include allegations of intentional concealment, which would toll the statute of limitations.

Appellant filed his SAC on May 23, 2008. Appellant alleged that, on November 5, 2003, Respondents performed surgery to repair damage to bones in his face that he incurred in his October 11, 2003, accident. Appellant was unconscious from the time of his accident until he awoke from surgery. He alleged that, prior to the surgery, his eyeball was not restricted in its movement, but that it was restricted following the surgery. He alleged that Respondents performed tests on his eye, revealing that the surgery caused the injury to his eye, and that they intentionally concealed this information from him. Appellant also alleged that he "experienced overlapping injury" from the October 2003 accident and the November 2003 surgery. Because the symptoms from the accident and the surgery "were temporarily identical for approximately six months or longer," Appellant did not discover the injury from the surgery until April 2004, rendering his complaint timely.

Respondents filed demurrers to the SAC, arguing that the statute of limitations barred the action. Respondents contended that Appellant had failed to allege any specific

facts to support the intentional concealment allegation and that Appellant set forth no facts as to why he did not suffer injury until April 2004. Tawfilis also argued that Appellant's allegations that Appellant asked Respondents for explanations for his double vision contradicted his deposition testimony that he never met Tawfilis during his hospitalization.

Appellant filed an opposition to the demurrers. In his opposition, Appellant stated that the statute of limitations did not need to be tolled based on Respondents' intentional concealment because, "even without tolling, the statute of limitations period did not expire until after the filing of plaintiff's complaint." Appellant accordingly stated that he "d[id] not oppose [Respondents'] demurrers on the grounds of tolling the statute [of limitations] for intentional concealment, and would stipulate to strike the concealment allegations from the Second Amended Complaint."

Because of Appellant's position, at a July 2008 hearing on the demurrers, Appellant's counsel stipulated that any allegations in the SAC that Respondents intentionally concealed information from Appellant were to be stricken. The hearing therefore focused on Appellant's allegation that his injuries from his accident and the surgery were "overlapping," causing the statute of limitations to begin running in April 2004. The trial court took the matter under submission.

Following the hearing, the trial court sustained Respondents' demurrers without leave to amend on statute of limitations grounds. The court expressed surprise that Appellant stipulated to strike the allegations of intentional concealment, explaining that the very reason the court had granted Appellant leave to file the SAC was to allow Appellant to allege intentional concealment.

The court then found that Appellant's claims were barred by the three-year limitations period for a medical malpractice action because Appellant knew that he had double vision when he regained consciousness in mid-November 2003, but he did not file his complaint until April 2007. (Code Civ. Proc., § 340.5.) The court further found that Appellant's claim was barred by the one-year limitations period of Code of Civil

Procedure section 340.5, stating that Appellant "immediately noticed his double vision and sought medical treatment for it, including a July 16, 2004 surgery with Dr. Kawamoto, more than two and a half years before [Appellant] filed this action." The court found that Appellant had not and "apparently cannot allege that despite diligent investigation of the circumstances of the injury, he could not have reasonably discovered facts supporting the cause of action within the application statute of limitations period," stating that Appellant had made only "the conclusory allegation that he suffered no injury for purposes of the statute of limitation[s] 'until after April 11, 2004.'" The court concluded by stating that the court had "already given [Appellant] leave to amend to allege the time and manner of discovery, and the inability to have made earlier discovery despite reasonable diligence, but [Appellant] is unable or unwilling to do so." Because Appellant also "disavows" the intentional concealment theory of tolling, the court sustained Respondents' demurrers without leave to amend.

On July 30, 2008, Appellant filed a motion for reconsideration and a request for leave to file a Third Amended Complaint ("TAC"). As Appellant argued in his SAC, he argued that he did not discover his injury until his expert reviewed his medical records. Following an August 2008 hearing on the motion, the court denied Appellant's motion. The court entered judgments of dismissal in favor of Respondents. Appellant filed a notice of appeal.

DISCUSSION

Appellant contends that the trial court abused its discretion in denying his motion for reconsideration and his request for leave to file a TAC.[2]

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[2] Tawfilis correctly points out that Appellant has not appealed the trial court's rulings on Respondents' motions for summary judgment and their demurrers to the SAC. Appellant seems to concede that the trial court did not err in sustaining the demurrers to the SAC, arguing instead that the court abused its discretion in denying leave to file the TAC.

I. Motion for Reconsideration

Code of Civil Procedure section 1008, subdivision (a) "requires that a motion for reconsideration be based on new or different facts, circumstances, or law. A party seeking reconsideration also must provide a satisfactory explanation for the failure to produce the evidence at an earlier time. [Citation.] A trial court's ruling on a motion for reconsideration is reviewed under the abuse of discretion standard. [Citation.]" (*New York Times Co. v. Superior Court* (2005) 135 Cal.App.4th 206, 212.)

Appellant contends that the trial court abused its discretion because his proposed TAC alleged facts different from those alleged in the SAC. Contrary to Appellant's contention, however, his proposed TAC does not contain facts different from those contained in his SAC. In the proposed TAC, Appellant added details about the forced duction test that allegedly revealed that the double vision was caused by the surgery, but the allegations are essentially the same as the allegations contained in the SAC.

Even if Appellant had raised new facts in the proposed TAC, he failed to provide a satisfactory explanation for his failure to raise these allegations earlier. (See *New York Times Co. v. Superior Court*, *supra*, 135 Cal.App.4th at p. 212.) Appellant alleged in the proposed TAC that he did not know about the test until his expert reviewed his medical records in July 2007, but he filed his SAC in May 2008. There is no explanation for Appellant's failure to include the allegations in the SAC. The trial court accordingly did not abuse its discretion in denying Appellant's motion for reconsideration.

II. Motion for Leave to File Third Amended Complaint

A. Trial Court's Exercise of Discretion

The trial court's exercise of its discretion to deny leave to file an amended complaint "'"will not be disturbed on appeal absent a clear showing of abuse."'" (*Branick v. Downey Savings & Loan Assn.* (2006) 39 Cal.4th 235, 242.) Because the discretion belongs to the trial court, not the reviewing court, "'"even if the reviewing court might have ruled otherwise in the first instance, the trial court's order will yet not be reversed unless, as a matter of law, it is not supported by the record."' [Citations.]"

(*Ibid.*) "The rights to amend a complaint rest within the sound discretion of the court [citation], and may be denied where there has been a long delay in seeking the amendment. [Citation.]" (*Fisher v. Larsen* (1982) 138 Cal.App.3d 627, 649 [finding no abuse in the court's denial of leave to amend where the plaintiff took no action to amend her complaint despite knowing about summary judgment motions for five months].)

As discussed above, the proposed TAC merely presented more details than the SAC did about the forced duction test. However, Appellant himself alleged in the SAC that the forced duction test was conducted in 2003, before, during, and immediately after surgery. The information accordingly was available to Appellant and was discoverable well before his expert witness reviewed his records. Appellant does not explain why he was unable to discover the existence of this test before July 2007.[3]

Moreover, even though Appellant allegedly learned about the test in July 2007 when his expert witness reviewed his medical records, the SAC was filed in May 2008, nine months later. Appellant gives absolutely no explanation as to why he was not able to include in the SAC these extra details that he now wants to add. Nine months passed after he learned about the test before he filed the SAC. As the trial court reasoned in its order sustaining Respondents' demurrers to the SAC, the court already had given Appellant leave to amend in order to allege facts that would bring the action within the limitations period, and yet Appellant failed to do so. The trial court's denial of leave to amend yet again, when Appellant already had failed to include details of the forced duction test that he had discovered nine months earlier, was not an abuse of discretion.

"[A]ppellate courts are less likely to find an abuse of discretion where, for example, the proposed amendment is '"offered after long unexplained delay . . . or where there is a lack of diligence . . . ."' [Citation.]" (*Melican v. Regents of the University of*

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3 At oral argument, Appellant repeatedly argued that, while he was in the hospital, "everyone" told him that the double vision was caused by his accident. However, he has proffered no evidence or factual allegations to support this contention. Indeed, he admitted that he never met or spoke with Tawfilis while he was in the hospital.

California (2007) 151 Cal.App.4th 168, 176.) The trial court's denial of Appellant's request to file the TAC was not an abuse of discretion.

B. Statute of Limitations

In addition to Appellant's failure to explain the delay in seeking to file the amended complaint, Appellant's proposed TAC does not solve the statute of limitations problem that led the trial court to sustain the demurrers. In *Foxborough v. Van Atta* (1994) 26 Cal.App.4th 217, 231, the court held that the trial court did not abuse its discretion in denying the plaintiff leave to amend its complaint, stating that "[t]he proposed amendment would have been futile because it was barred by the statute of limitations." Similarly here, Appellant's proposed TAC is barred by the statute of limitations.

Appellant contends that the trial court abused its discretion in denying leave to amend because the proposed TAC is timely under both the three-year and the one-year limitations periods set forth in Code of Civil Procedure section 340.5. We reject Appellant's contentions.

1. Three-Year Limitations Period

The statute of limitations for medical malpractice actions is found in Code of Civil Procedure section 340.5. The statute provides, in pertinent part, that, "[i]n an action for injury or death against a health care provider based upon such person's alleged professional negligence, the time for the commencement of action shall be three years after the date of injury or one year after the plaintiff discovers, or through the use of reasonable diligence should have discovered, the injury, whichever occurs first. In no event shall the time for commencement of legal action exceed three years unless tolled for any of the following: (1) upon proof of fraud, (2) intentional concealment, or (3) the presence of a foreign body, which has no therapeutic or diagnostic purpose or effect, in the person of the injured person." (Code Civ. Proc., § 340.5.)

Thus, "[t]he maximum limitations period for a medical malpractice action is three years from the *date of injury*, tolled for fraud, intentional concealment, or the presence of

nontherapeutic and nondiagnostic foreign bodies only. [Citation.]" (*Garabet v. Superior Court* (2007) 151 Cal.App.4th 1538, 1545 (*Garabet*).) "It is well established that, '[t]he term "injury," as used in section 340.5, means both a person's physical condition and its negligent cause.' [Citation.] However, a person need not *know* of the actual negligent cause of an injury; *mere suspicion* of negligence suffices to trigger the limitation period. [Citations.]." (*Knowles v. Superior Court* (2004) 118 Cal.App.4th 1290, 1295.)

Appellant relies on *Steingart v. White* (1988) 198 Cal.App.3d 406 (*Steingart*), to argue that his action was timely filed. In *Steingart*, the plaintiff found a lump in her breast, which her doctor diagnosed as fibrocystic disease. Three years after her initial examination, the plaintiff learned that she had breast cancer. She filed a medical malpractice claim within one year of the cancer diagnosis, but more than four years after the initial examination. The trial court found that the action was barred by the statute of limitations. On appeal, however, the court held that "it is the date of the injury, not the date of the negligence, which commences the running of the three-year period within which a malpractice action must be filed under section 340.5." (*Id.* at p. 414.) The court stated that the plaintiff's injury "remained unknown until cancer had been diagnosed" and that the complaint accordingly was timely. (*Id.* at p. 417.)

The three-year period also was addressed in *McNall v. Summers* (1994) 25 Cal.App.4th 1300 (*McNall*). In *McNall*, the plaintiff suffered memory loss following electroconvulsive therapy, but her physician repeatedly reassured her that her memory would return and that her memory loss was a side effect of the treatment or was a result of her depression. The trial court found that her medical malpractice claim was barred by the statute of limitations, but the plaintiff relied on *Steingart* to argue that, although she was aware of her memory loss earlier, the statute of limitations did not begin to run until she discovered the cause. On appeal, the court rejected her argument, reasoning that, unlike the plaintiff in *Steingart*, her injury was not hidden – to the contrary, she "fully recognized she was continuously experiencing harmful lapses in memory." (*Id.* at p. 1310.) The court thus held that her memory loss "constitute[d] 'injury' for the purpose

of triggering the three-year period even if [the plaintiff] did not, or arguably could not, discover the actual organic injury causing the loss of memory or discern the negligent conduct of her doctors." (*Id.* at p. 1311.)

In *Garabet, supra*, the plaintiff underwent lasik surgery on both eyes in August 1998. Within weeks after the surgery, the plaintiff experienced numerous symptoms, such as dryness, double vision, and loss of visual acuity in both eyes, but the defendants told him that the symptoms were normal symptoms following the surgery. The plaintiff continued to receive treatment from the defendants until 2001. In 2004, the plaintiff sought treatment from a different doctor, who recommended that he see a specialist. In 2005, the plaintiff saw a specialist, who told him that his problems were caused by the 1998 surgery. The plaintiff filed a medical malpractice action in 2005, but the defendants sought summary judgment, contending that the three-year statute of limitations of Code of Civil Procedure section 340.5 had expired before the suit was filed. After the trial court denied their summary judgment motions, the defendants filed a petition for writ of mandate.

On appeal, the *Garabet* court held that the three-year limitations period had expired. (*Garabet, supra*, 151 Cal.App.4th at pp. 1549-1551.) The court reasoned that the plaintiff had suffered the damaging effects of the lasik surgery almost immediately following the surgery and had complained about the effects to the defendants repeatedly. (*Id.* at p. 1550.) The court rejected the plaintiff's reliance on *Steingart*, instead reasoning that, "[l]ike the plaintiff in *McNall*, [the plaintiff] experienced injuries that were characteristic side effects of the medical procedure." (*Id.* at p. 1550.)

Appellant's situation is distinguishable from *Steingart* and is similar to *McNall* and *Garabet*. Similar to *McNall* and *Garabet*, "[t]here was nothing hidden about [Appellant's] injuries." (*Garabet, supra*, 151 Cal.App.4th at p. 1550; see also *McNall, supra*, 25 Cal.App.4th at p. 1310.) Instead, as in *McNall*, where the plaintiff "fully recognized she was continuously experiencing harmful lapses in memory," Appellant was fully aware of his double vision from the moment he awoke from his surgery.

(*McNall, supra*, 25 Cal.App.4th at p. 1310.) Similar to *Garabet,* Appellant experienced the double vision immediately following surgery and was told that the symptoms were a normal result of the surgery. (*Garabet, supra*, 151 Cal.App.4th at p. 1541.) Unlike *Steingart*, in which the cancer was unknown to the plaintiff, there is no question that Appellant was aware of the double vision immediately following the surgery. Appellant did not need to know of the allegedly negligent cause of his injury in order to trigger the statute of limitations. (*Knowles v. Superior Court*, *supra*, 118 Cal.App.4th at p. 1295.) Instead, his awareness of the injury immediately following surgery triggered the limitations period; therefore, the statute of limitations expired well before Appellant filed his complaint.

2. One-Year Limitations Period

Even if Appellant's claim were not barred by the three-year maximum limitations period, it would be barred by Code of Civil Procedure section 340.5's one-year limitations period, which is "one year after the plaintiff discovers, or through the use of reasonable diligence should have discovered, the injury." (Code Civ. Proc., § 340.5.) "The patient is 'charged with "presumptive" knowledge of his negligent injury, and the statute commences to run, once he has "'notice or information of circumstances to put a reasonable person on *inquiry*, or *has the opportunity to obtain knowledge* from sources open to his investigation. . . .'" [Citation.] Thus, when the patient's "reasonably founded suspicions [have been aroused]," and she has actually "become alerted to the necessity for investigation and pursuit of her remedies," the one-year period for suit begins. [Citation.]'" (*Artal v. Allen* (2003) 111 Cal.App.4th 273, 279.)

There is no question that Appellant was on notice of circumstances that would have put a reasonable person on inquiry more than one year before he filed the complaint. He testified that he was aware of the double vision the moment he awoke from surgery in November 2003, and yet he did not file his initial complaint until April 2007.

In *Norgart v. Upjohn Co.* (1999) 21 Cal.4th 383, 389, the California Supreme Court explained that the discovery rule "postpones accrual of a cause of action until the

plaintiff discovers, or has reason to discover, the cause of action, until, that is, he at least suspects, or has reason to suspect, a factual basis for its elements." The court stated that the plaintiff "need not know the 'specific "facts" necessary to establish' the cause of action; rather, he may seek to learn such facts through the 'process contemplated by pretrial discovery'; but, within the applicable limitations period, he must indeed seek to learn the facts necessary to bring the cause of action in the first place-he 'cannot wait for' them 'to find' him and 'sit on' his 'rights'; he 'must go find' them himself if he can and 'file suit' if he does [citation]." (*Id.* at p. 398.) "In order to employ the discovery rule to delay accrual of a cause of action, a plaintiff must demonstrate that he . . . conducted a reasonable investigation of all potential causes of his . . . injury." (*Fox v. Ethicon Endo-Surgery, Inc.* (2005) 35 Cal.4th 797, 811 (*Fox*).)

Here, Appellant has failed to show that he conducted "a reasonable investigation of all potential causes of [his] injury." (*Fox*, *supra*, 35 Cal.4th at p. 808.) The proposed TAC does not contain allegations that, "despite diligent investigation of the circumstances of the injury, he . . . could not have reasonably discovered facts supporting the cause of action within the applicable statute of limitations period." (*Id.* at p. 809.) Instead, as discussed above, Appellant himself alleged that he discovered the results of the forced duction test in July 2007 and still did not discover facts supporting his cause of action within the statute of limitations when he filed his SAC in May 2008, nine months later.

Appellant repeatedly states in the proposed TAC that he did not learn about the forced duction test until July 2007. However, the test was conducted in 2003, while Appellant was in the hospital. Appellant completely fails to "'specifically plead facts to show . . . the inability to have made earlier discovery despite reasonable diligence.' [Citation.]" (*Fox*, *supra*, 35 Cal.4th at p. 808.) Appellant has failed to demonstrate any reason for delaying the accrual of his cause of action. The one-year limitations period began to run in November 2003, when Appellant's suspicions were aroused and he was "alerted to the necessity for investigation and pursuit of [his] remedies." (*Artal v. Allen*,

supra, 111 Cal.App.4th at p. 279.) His action accordingly was barred by the one-year limitations period, and the trial court's denial of his motion for leave to file the TAC was not an abuse of discretion.

C. Doe Defendants

There is yet another reason that the trial court did not abuse its discretion. As Respondents argued in their summary judgment motions, they are not proper Doe defendants, so none of Appellant's amended complaints relate back to the filing of his original complaint.

Code of Civil Procedure section 474 provides, in pertinent part, that "[w]hen the plaintiff is ignorant of the name of a defendant, he must state that fact in the complaint, . . . and such defendant may be designated in any pleading or proceeding by any name, and when his true name is discovered, the pleading or proceeding must be amended accordingly . . . ." (Code Civ. Proc., § 474.) "'The purpose of section 474 is to enable a plaintiff to avoid the bar of the statute of limitations when he [or she] is ignorant of the identity of the defendant.' [Citation.]" (*Davis v. Marin* (2000) 80 Cal.App.4th 380, 386.) "If the requirements of section 474 are satisfied, the amended complaint substituting a new defendant for a fictitious Doe defendant filed after the statute of limitations has expired is deemed filed as of the date the original complaint was filed. [Citation.]" (*Woo v. Superior Court* (1999) 75 Cal.App.4th 169, 176.) In order to rely on the Doe defendant statute, however, the plaintiff "must have been genuinely ignorant" of the Doe defendant's identity at the time the complaint was filed. (*Id.* at p. 177.)

Here, the record is clear that Appellant should have known the identities of Respondents at the time he filed his original complaint, on the grounds that their names were in the medical records, and that Appellant certainly knew that he had been hospitalized at UCSD. Thus, even if the original complaint, filed in April 2007, was not untimely, Appellant did not identify Respondents as Doe defendants until July 2007, after he filed his FAC in May 2007. The amendment does not relate back to the filing of the original complaint because there is no question that Appellant was or should have been

aware of the identities of Respondents at the time he filed his original complaint. Thus, even if Appellant's original complaint was timely filed, the amended complaints naming Respondents do not relate back to the filing of the original complaint.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED.

CHANEY, J.

We concur:

ROTHSCHILD, Acting P. J.

JOHNSON, J.